

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Digital Audio Broadcasting Systems)	
And Their Impact on the Terrestrial)	MM Docket No. 99-325
Radio Broadcast Service)	
)	

To: The Commission

REPLY COMMENTS OF INFINITY BROADCASTING CORPORATION

**INFINITY BROADCASTING
CORPORATION**

By: Steven A. Lerman
Christopher J. Sova
John W. Bagwell

Stephen A. Hildebrandt
Infinity Counsel

Leventhal Senter & Lerman PLLC
2000 K Street, NW, Suite 600
Washington, D.C. 20006
(202) 429-8970

August 2, 2004

Its Attorneys

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Digital Audio Broadcasting Systems)	
And Their Impact on the Terrestrial)	MM Docket No. 99-325
Radio Broadcast Service)	

To: The Chief, Media Bureau

REPLY COMMENTS OF INFINITY BROADCASTING CORPORATION

Infinity Broadcasting Corporation ("*Infinity*"), by its attorneys, hereby submits reply comments in response to the Further Notice of Proposed Rulemaking and Notice of Inquiry, FCC 04-99, released by the Federal Communications Commission ("*FCC*" or "*Commission*") on April 20, 2004. Infinity, one of the largest radio broadcasting companies in the United States, has been supportive of iBiquity's IBOC system since the inception of DAB. Infinity's radio stations serve diverse segments of the population and offer listeners a wide variety of programming formats. Currently, six of Infinity's stations, including two AM stations, are broadcasting in hybrid IBOC DAB.¹

NIGHTTIME AM IBOC SHOULD BE AUTHORIZED ON A BLANKET BASIS FOR ALL AM STATIONS CURRENTLY AUTHORIZED FOR NIGHTTIME SERVICE

Clear Channel Communications, Inc. ("*Clear Channel*"), in its comments filed in this proceeding, stated that it generally supports the NAB's recommendation that AM stations be

¹ KBKS (FM), Seattle; KCBS(AM), San Francisco; KROQ-FM, Los Angeles; WBZ (AM), Boston; WNEW(FM), New York; and WUSN(FM), Chicago. It should be noted that Infinity, along with certain other broadcast entities, has an equity interest in iBiquity Digital Corporation.

permitted to implement nighttime IBOC service, but urged the Commission to institute a formal notification and comment process by which licensees seeking to implement such service would be required to notify all potentially affected stations in writing in advance of contemplated implementation.² In particular, Clear Channel suggested that AM licensees be required to notify all potentially affected stations in writing 60 days in advance of the planned implementation of nighttime IBOC service, and that such potentially affected stations be given a period of 30 days to object in writing to the proposed IBOC nighttime implementation or be deemed to have consented. Additionally, Clear Channel suggested that the Commission define and codify precise definitions of prohibited interference, and interfering and protected contours in the digital AM context, and that in the event an affected station objects to the proposed IBOC nighttime deployment, and a resolution between the parties cannot be reached before the planned implementation date, that the Commission should direct the implementing station to reduce digital power by 6 dB during nighttime operation pending a resolution of the objection.

Comments of Clear Channel at 7.

As Infinity previously stated in its comments in this proceeding, the Commission should authorize nighttime AM IBOC service on a blanket basis for all AM stations currently authorized to provide nighttime service, rather than requiring each individual AM station to obtain piecemeal nighttime IBOC authorization. Infinity opposes Clear Channel's suggestion of a prior notice scheme for the implementation of AM nighttime operation, and the reduction of digital power in the event that a purportedly affected station objects to the proposed implementation and a resolution of the objection is not reached. The approach suggested by Clear Channel is

² Comments of Clear Channel Communications, Inc., filed June 16, 2004 at 6-7. (*"Comments of Clear Channel"*).

impractical, would be costly to implement, is unnecessary, is susceptible to abuse, and will only serve to further delay the conversion to improved digital audio broadcasting that is critical to revitalization of the AM band.

In the *AM Nighttime Compatibility Study Report* issued by iBiquity Digital Corporation on March 5, 2004, and the recommendations submitted in a letter from the National Association of Broadcasters regarding the Report,³ it was noted that some limited interference may be created by nighttime AM IBOC service, but that in most circumstances, any such interference that would likely occur to existing groundwave analog broadcasts would be at the outer edges of a station's coverage area. As a result, an AM station's core listenership is extremely unlikely to be impacted by nighttime IBOC operation. Moreover, the FCC already has the necessary existing authority and procedural tools to address any such unexpected interference that might occur. Therefore, Infinity submits that Clear Channel's concerns regarding such interference are exaggerated, and the prior notification rules that Clear Channel suggests to deal with such possible interference are ill advised.

Moreover, in its interim Report and Order authorizing IBOC operation, the Commission presented a workable approach to resolve interference disputes regarding AM IBOC.⁴ Under the approach contemplated by the Report and Order, the Media Bureau would have 90 days to act on an interference complaint regarding AM IBOC. If the Media Bureau did not do so within this period, the station allegedly causing the interference would as a default be required to reduce its primary digital subcarrier power level by 6 dB. Infinity believes that this approach is the most

³ Letter to Marlene H. Dortch, Secretary, FCC, from Jack N. Goodman, Senior Vice President & General Counsel, NAB (March 5, 2004) ("*NAB Letter*").

⁴ Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service, *Report and Order*, 17 FCC Rcd 19990, 19999-20000 (2002) (the "*Report and Order*").

efficient and effective way to address AM nighttime interference issues, provided that the Commission establishes a suitable objective methodology for determining that actual interference is present, and provided that the Media Bureau commits to resolve the interference dispute expeditiously, for example, within 90 days after the allegedly offending station has reduced its digital power. In this way, AM stations, both analog and hybrid digital, will be assured that any possible interference issues will be resolved promptly.

By contrast, Clear Channel's proposal for prior notification will serve only to impede the introduction of AM IBOC. Clear Channel proposes that "all potentially affected stations" be notified in writing about the planned implementation of nighttime AM IBOC service on a particular station. Infinity believes that it would be very difficult to determine which stations would be included in the universe of "all potentially affected stations," that the process of notifying all such stations would be unduly burdensome and that this procedure will deter AM stations from implementing AM nighttime IBOC service. In addition, Clear Channel's proposal would allow any "potentially affected station" to object to the proposed IBOC implementation based merely on speculation and prediction that interference might occur, rather than on the occurrence of *bona fide* interference. Clearly, such a scheme is susceptible to abuse by a "potentially affected station" that would, perhaps for competitive reasons, attempt to impede the implementation of superior AM IBOC service by a competing station.

As Infinity stated in its Comments, the NAB Letter indicates iBiquity's field tests showed that skywave IBOC would have a limited impact on analog groundwave service, and that this low level of interference was present only on the fringe of coverage. Further, only minimal impact was seen from groundwave IBOC interference on analog skywave service. The minimal

potential interference is more than offset by the substantial public service enhancements that will result from the adoption of AM IBOC, including nighttime service.

IBOC digital audio broadcasting offers a remarkable opportunity to revitalize the AM service, which has historically kept its finger on the pulse of the general public, remaining intensely responsive to the community's needs and interests. The Commission should recognize the significant public interest inherent in the efficient and expeditious adoption of rules to facilitate the adoption of AM IBOC service, both for daytime and nighttime operations. Clear Channel's proposal will have the effect of deterring AM licensees from implementing AM IBOC, and should be summarily rejected. Infinity therefore respectfully requests that the Commission authorize nighttime AM IBOC service on a blanket basis for all AM stations currently authorized to provide nighttime service.

Respectfully submitted,

**INFINITY BROADCASTING
CORPORATION**

By:



Steven A. Lerman
Christopher J. Sova
John W. Bagwell

Stephen A. Hildebrandt
Infinity Counsel

Leventhal Senter & Lerman PLLC
2000 K Street, NW, Suite 600
Washington, D.C. 20006
(202) 429-8970

Its Attorneys

August 2, 2004